

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

MARI ANTHONY,  
Defendant

:  
:  
:  
: Case 01-CR-336-04  
:  
:  
:

TRANSCRIPT OF PROCEEDINGS

GUILTY PLEA

**FILED**  
**HARRISBURG, PA**

AUG 14 2003

MARY E. D'ANDREA, CLERK  
Per *[Signature]*

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: September 26, 2002

PLACE: Courtroom Number Three  
Federal Building  
Harrisburg, Pennsylvania

COUNSEL PRESENT:

WILLIAM BEHE, Assistant United States Attorney  
For - United States of America

KYLE W. RUDE, Esquire  
For - Defendant

Vicki L. Fox, RMR  
Official Reporter

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1 THE COURT: Good morning.

2 MR. BEHE: Good morning, Your Honor.

3 Mr. Anthony, come forward, please.

4 Your Honor, the first matter before you is that  
5 of the United States of America v. Mari Anthony. This is at  
6 Criminal Docket Number 01-336-04.

7 May the record reflect that Mr. Anthony is  
8 present before you with counsel Mr. Rude. Mr. Anthony has  
9 signed a plea agreement in this matter that was filed with  
10 the Court. And pursuant to the terms of the plea agreement,  
11 Mr. Anthony is agreeing to withdraw his plea of not guilty  
12 as to Count 2 of the third superseding indictment and enter  
13 a plea of guilty to that count pursuant to the terms of the  
14 plea agreement.

15 THE COURT: Mr. Anthony, before I can accept your  
16 change of plea, it will be necessary for me to establish for  
17 the record that you understand your rights and the  
18 consequences of your plea.

19 You will be placed under oath, and I will ask  
20 certain questions of you. You should be advised if you give  
21 me any false answers, you could be subject to further  
22 prosecution for perjury or false swearing.

23 Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you further understand that if you

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1       went to trial in this matter, you could not be forced to  
2       take the witness stand and testify against yourself. But  
3       because you are entering a plea of guilty, I must establish  
4       for the record your involvement in these charges.

5               I will ask questions of you to which you must  
6       respond thereby giving up your right against  
7       self-incrimination.

8               Do you understand that?

9               THE DEFENDANT: Yes, ma'am.

10              (MARI ANTHONY was duly sworn.)

11       BY THE COURT:

12       Q       How old are you?

13       A       26.

14       Q       How far have you gone in school?

15       A       Tenth grade. I got my GED.

16       Q       Do you fully read and write English?

17       A       Yes, ma'am.

18       Q       Have you taken any drugs or alcohol before coming into  
19       court today?

20       A       Yes.

21       Q       What?

22       A       Marijuana.

23       Q       Today?

24       A       No, no, no. Like previous, in the past.

25       Q       I am asking you today before coming into court.

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1 A No, no.

2 Q Are you undergoing any psychological or psychiatric  
3 counseling of any kind?

4 A No, ma'am.

5 THE COURT: Mr. Rude, are you privately retained?

6 MR. RUDE: Yes, Your Honor.

7 BY THE COURT:

8 Q Do you understand that if at any stage of these  
9 proceedings you can no longer afford to retain counsel, the  
10 Court on proper application will appoint a Public Defender  
11 to represent you without cost; do you understand?

12 A Yes, ma'am.

13 Q You also have a right to represent yourself. Do you  
14 understand that?

15 A Yes, ma'am.

16 Q Are you satisfied with the representation you have  
17 received from counsel to date?

18 A Yes.

19 Q Now you do have a right to persist in a plea of not  
20 guilty and proceed to trial in this matter in which you  
21 through counsel would select a jury consisting of twelve  
22 persons.

23 At the trial, the government would have the  
24 responsibility to prove each and every element of the crime  
25 charged against you beyond a reasonable doubt. You are

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1 presumed innocent until that burden is met.

2 At the trial, you would have the right through  
3 counsel to cross-examine any witnesses the government would  
4 present. You, in turn, would have the right to subpoena  
5 witnesses and evidence on your own behalf; although, you are  
6 not required to do so.

7 Any finding of guilt would have to be unanimous.  
8 That is all twelve jurors would have to agree.

9 If you give up your right to a jury trial, you  
10 give up your right to present any defenses that you may have  
11 or the right to appeal any pretrial motions.

12 Do you understand your right to a jury trial?

13 A Yes, I do.

14 Q Is it your desire to give up your right to a jury  
15 trial and enter a plea to Count 2 of the third superseding  
16 indictment?

17 A Yes.

18 THE COURT: There is a plea agreement in this  
19 matter. I would ask the government to state the essence of  
20 the plea agreement for the record.

21 MR. BEHE: Yes, Your Honor. In exchange for  
22 Mr. Anthony agreeing to withdraw his plea of not guilty as  
23 to Count 2 of the third superseding indictment and enter a  
24 plea of guilty to that particular count, the United States  
25 at the time of sentencing agrees that it will move for the

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1 dismissal of any remaining counts and any outstanding  
2 indictments against him.

3 Mr. Anthony understands that by entering a plea  
4 of guilty to that count, he faces a mandatory minimum term  
5 of imprisonment of ten years and a maximum term of  
6 imprisonment of up to life, as well as at least a three year  
7 term of supervised release. That would be imposed by the  
8 Court and have to be served at the conclusion of any term of  
9 imprisonment that he is serving, denial of certain federal  
10 benefits and an assessment -- a special assessment in the  
11 amount of \$100.00.

12 It has been represented to the United States by  
13 counsel for the defendant that he will be able to accept  
14 responsibility for his offense. And if he can do this, the  
15 United States agrees it would recommend to the Court that he  
16 receive a two level reduction in his offense level for  
17 acceptance of responsibility.

18 The defendant understands, of course, that this  
19 is a matter that is left entirely up to the Court. By that  
20 I mean that even if the United States should make that  
21 recommendation, the Court is free to accept or reject that.  
22 And he understands should the Court not accept that  
23 recommendation, that would not provide him with a basis to  
24 void or withdraw the plea agreement.

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1 He has not agreed to cooperate with the United  
2 States. So all of that language concerning cooperation and  
3 the extent of it is absent from this plea agreement.

4 However as Your Honor I am sure is familiar with,  
5 there were pretrial motions filed in this matter concerning  
6 suppression of evidence and other matters. Paragraph 14 of  
7 the plea agreement provides that pursuant to Rule 11,  
8 subparagraph (a)(2) of the Federal Rules of Criminal  
9 Procedure with the approval of the Court and the consent of  
10 the United States, the defendant enters a conditional plea  
11 described in the plea agreement reserving the right on  
12 appeal to review the adverse determination of all pretrial  
13 motions denied by the Court.

14 Everybody who is a party to this agreement  
15 acknowledges that Mr. Anthony would be allowed to withdraw  
16 his plea of guilty if he prevails on appeal. The United  
17 States does consent -- or agree I should say -- to the  
18 entering of this conditional plea. And Mr. Anthony  
19 understands that that is, of course, subject to the approval  
20 of the Court as well.

21 Those are the salient terms of the plea  
22 agreement, Your Honor.

23 THE COURT: I think in my colloquy with him I  
24 indicated that by entering a plea of guilty, he waived his  
25 right to challenge any appeal, and that is incorrect.

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1 Pursuant to paragraph 14 of the plea agreement, this is a  
2 conditional plea. He does have the right to appeal the  
3 Court's adverse ruling on pretrial motions. And should they  
4 be favorable to him, the plea would be withdrawn.

5 Is that correct?

6 MR. BEHE: Yes, Your Honor. That is correct.

7 BY THE COURT:

8 Q In all other respects, is that your understanding of  
9 the plea agreement?

10 A Yes, ma'am.

11 Q Have there been any other promises made to you that  
12 haven't been set forth in this plea agreement?

13 A No, ma'am.

14 Q Have there been any threats against you or any member  
15 of your family to get you to enter into the plea agreement?

16 A No.

17 Q Has anyone promised you what your sentence would be?

18 A No.

19 Q In that regard, do you understand that the minimum  
20 sentence you could receive in this would be ten years; the  
21 maximum could be life? You could also be subject to a fine  
22 of four million dollars, or both, a term of supervised  
23 release, denial of certain federal benefits and a special  
24 assessment of \$100.00.

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1 Now the supervised release is served after any  
2 term of imprisonment. And should you during the course of  
3 any supervised release violate any term of the supervised  
4 release, you could be sent back to prison.

5 Do you understand?

6 A Yes.

7 Q Now there are Sentencing Guidelines that this Court  
8 must follow. I will not know what those Guidelines are  
9 until after your presentence report is completed.

10 So if anyone has suggested to you what your  
11 Guideline sentence would be and if it differs from what the  
12 Court finds, you cannot withdraw your guilty plea; do you  
13 understand that?

14 A Yes.

15 Q I show you a document entitled Plea Agreement. Have  
16 you reviewed that agreement with counsel?

17 A Yes, ma'am.

18 Q Is that your signature?

19 A Yes.

20 Q Do you have any questions of the Court concerning  
21 anything in that document?

22 A No.

23 Q You are charged in Count 2 from on or about December  
24 6th of '98 concluding April 25, 2002, in Harrisburg, Dauphin  
25 County of intentionally and knowingly distributing 50 grams

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1 or more of cocaine base, also known as crack cocaine, and  
2 500 grams of cocaine hydrochloride, both substances Schedule  
3 II controlled substances. And it is illegal to distribute  
4 same.

5 I would ask Mr. Behe to state what facts you  
6 would present in support of the charge.

7 MR. BEHE: Yes, Your Honor. Not only is Mr.  
8 Anthony charged with distributing the same, he is also  
9 charged with manufacturing and possessing with the intent to  
10 manufacture and distribute those substances, as well as  
11 being an accomplice in that conduct.

12 Those provisions are important as the facts that  
13 the United States would present in this matter would  
14 establish that the Drug Enforcement Administration was  
15 working jointly with the Dauphin County Drug Task Force  
16 since about October of last year investigating the drug  
17 trafficking activities of codefendant Tyrone Smith, Junior,  
18 who was also known as Manny.

19 Using a confidential informant, Police were able  
20 to make several purchases from Smith and his cousins Isaiah  
21 and Malik Pacheco. And by buys, I mean of controlled  
22 substances. This matter at that time meaning October of  
23 last year, it was both crack cocaine and cocaine  
24 hydrochloride.

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1           Those three individuals were arrested in late  
2           October of last year, but the investigation continued, and  
3           the Police were able to establish that the defendant here  
4           Mr. Anthony, who is related to Tyrone Smith, had also been  
5           distributing crack and cocaine hydrochloride during the  
6           period of time stated in Count 2 of the third superseding  
7           indictment in I guess in conjunction with and as part of  
8           what Mr. Smith was doing during that same period of time.

9           The investigation continued. Numerous  
10          individuals would be prepared to testify about their  
11          dealings with Mr. Smith and the defendant. As Your Honor  
12          recalls from the testimony presented at the suppression  
13          hearing in this matter, on April 24th of this year, a  
14          traffic stop was made of a van that was being operated by  
15          the defendant.

16          The lone passenger in that van was Lawrence  
17          Johnson who turns out was also related to the defendant or  
18          Mr. Smith or both. It was determined that there were  
19          outstanding warrants for both individuals. DEA agents had  
20          been conducting surveillance of the two men. And shortly  
21          before the van was stopped, they observed a black gym bag  
22          being taken out of the defendant's town home and placed into  
23          the van and then the van proceeding down the highway towards  
24          Harrisburg.

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1 As the Police attempted to arrest codefendant  
2 Johnson, since Mr. Anthony was already in a Police vehicle,  
3 Mr. Johnson struggled with the Police, and a substantial  
4 amount of crack cocaine that had been tucked inside his  
5 waistband spilled out onto the roadway.

6 An additional amount of powder cocaine was seized  
7 from within or -- from inside Johnson's waistband. A  
8 subsequent search of the van uncovered an additional amount  
9 of crack cocaine that was still moist and drying, indicating  
10 that it had just been converted from powder cocaine into  
11 crack cocaine, as well as scales and approximately \$9,000.00  
12 in U.S. currency.

13 A later search of the town home belonging to the  
14 defendant yielded additional cocaine, as well as all of the  
15 ingredients that indicated that crack cocaine had just  
16 recently been cooked there, as that term is used.

17 Police recovered baking soda, a cooking pot with  
18 what appeared to be crack cocaine residue on it. And a lab  
19 report confirmed that, indeed, that was the residue  
20 indicating as stated, that cocaine hydrochloride had been  
21 converted into crack cocaine recently in that home.

22 All totaled on that occasion alone, the Police  
23 seized several hundred grams of crack cocaine or cocaine  
24 base and several hundred grams of cocaine hydrochloride.  
25 Although the substances were primarily in Mr. Johnson's

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1 waistband within the van itself, and residue and additional  
2 cocaine in Mr. Johnson's town home were recovered pursuant  
3 to the search, Mr. Johnson by admitting that he is an  
4 accomplice in this is likewise responsible for the entire  
5 amount.

6 THE COURT: Mr. Anthony, did you as set forth in  
7 Count 2 of the indictment from the period of time I believe  
8 '98 until April 25, 2002 in Dauphin County intentionally and  
9 knowingly and unlawfully manufacture, distribute and possess  
10 with intent to manufacture and distribute 50 grams or more  
11 of crack cocaine base -- excuse me -- cocaine base, known as  
12 crack cocaine, and 500 grams or more of cocaine  
13 hydrochloride, and did you aid and abet -- is it  
14 Mr. Johnson?

15 MR. BEHE: Johnson and Smith.

16 THE COURT: -- Johnson and Smith in this matter?

17 MR. RUDE: Your Honor, my client has a question  
18 for me. If I could take one second?

19 THE COURT: Yes.

20 MR. RUDE: Your Honor, Mr. Anthony can answer  
21 some of the questions -- he can answer affirmatively to some  
22 of the question you asked. If I can break it down?

23 THE COURT: Yes.  
24  
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1 BY MR. RUDE:

2 Q Mr. Anthony, did you aid and abet Tyrone Smith from  
3 December 6th, 1998 until April 25th, 2002?

4 A No, I didn't.

5 Q Did you aid and abet Lawrence Johnson in possessing or  
6 possessing with intent to deliver drugs on April 24th, 2002,  
7 Lawrence Johnson?

8 A Yes, ma'am.

9 Q Regarding possession with intent to deliver 50 grams  
10 or more of cocaine base and 500 grams or more of powder  
11 cocaine, did you have that possession either with you or in  
12 your townhouse on April 24th, 2002?

13 A Yes.

14 THE COURT: Is manufacture an essential element  
15 of this offense?

16 MR. BEHE: To the extent that the evidence  
17 establishes they converted powder cocaine into crack  
18 cocaine.

19 THE COURT: Did you assist in converting cocaine  
20 into crack cocaine?

21 MR. RUDE: Your Honor, the problem is the date,  
22 not the action. On April 24, 2002 --

23 MR. BEHE: I think what the problem is here is  
24 Mr. Anthony is attempting to constrict the time frame of  
25 Count 2 and admit to the Court his involvement in criminal

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1 activity for a very limited period of time of April 24th  
2 through April 25th, meaning the date that the Police  
3 actually caught him and Mr. Johnson with the drugs.

4 The problem, of course, is that he has pled  
5 guilty to Count 2 or signed a plea agreement to Count 2  
6 which has a much more extended period of time for his  
7 involvement in criminal activity.

8 I have witnesses who are prepared to say that  
9 they purchased drugs from him during that period of time.  
10 And regardless of his attempt to restrict it to two days,  
11 that is all relevant conduct which would be considered by  
12 the Court anyhow.

13 I think -- or at least I sense that is what  
14 Mr. Anthony is attempting to do here, to distance himself,  
15 number one, from Tyrone Smith. And that is fine whether I  
16 believe him or not.

17 But in terms of Count 2 and the embrace of that  
18 count and his activity, he has to admit under the plea  
19 agreement that during that period of time, he was involved  
20 in that criminal activity.

21 Now he may contest the amount beyond April 24th  
22 and 25th if he doesn't think he distributed or possessed as  
23 much as others attribute to him. He can't distance himself  
24 from the amounts -- and he has admitted that he is not going  
25 to contest the amounts that were seized or recovered from

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1 his town home, but he has to understand that the conduct  
2 that is alleged in there may be considered by the Court in  
3 terms of setting his guideline range. I am explaining what  
4 I think is going on.

5 MR. RUDE: Your Honor, Mr. Behe is explaining  
6 correctly Count 2. Mr. Anthony has advised me from the  
7 beginning and sworn to tell the truth today that yes, he was  
8 involved on April 24th. He was not involved as the wide  
9 breadth of time that Count 2 implicates from December 6th,  
10 1998 to April 25th, 2002.

11 However, I believe his facts stated of April 24,  
12 2002 is within that time period, and he has stated facts to  
13 support a guilty plea in fact accepting responsibility for  
14 what he has done.

15 I have no reason to believe based on  
16 conversations with Mr. Anthony that he is testifying falsely  
17 to the Court, speaking falsely to the Court. It is  
18 consistent with what he has told his counsel from the  
19 beginning.

20 He has admitted to being in possession, that  
21 being the van, Mr. Johnson's person and in his town house of  
22 the amounts of drugs as stated in Count II.

23 I have discussed with him relevant conduct and  
24 what the government would seek to prove as far as the  
25 guidelines. And we are prepared to litigate that. However,

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1 he has stated facts -- we do believe he is guilty of Count  
2 2. I think the facts he has stated are sufficient to accept  
3 responsibility for Count 2 of the third superseding  
4 indictment.

5 THE COURT: It may impact on his acceptance of  
6 responsibility.

7 MR. RUDE: I understand that, Your Honor. I  
8 believe my client understands that. But he has been  
9 consistent with me. He swore to tell the truth. I believe  
10 he is attempting to do that today.

11 THE COURT: We will probably end up having a  
12 hearing prior to sentencing on this matter.

13 MR. BEHE: I would think so. I think that the  
14 facts concerning the search and seizure on the 24th and 25th  
15 with regard to amount is uncontested. It is just a question  
16 of the defendant, he is admitting that during this period of  
17 time, he engaged in this conduct. He is just not agreeing  
18 with the government that it is as extensive. It may require  
19 a hearing because we do have additional witnesses.

20 THE COURT: There is another fact though. The  
21 amounts, is he pleading to 50 grams or more of cocaine base  
22 and 500 grams or more of cocaine hydrochloride? That is  
23 part of the charge, too.

24 MR. RUDE: Yes, Your Honor. According to the  
25 testimony from the suppression hearing, more than 50 grams

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1 of cocaine base was seized in the bag next to him on the  
2 person of Mr. Johnson. And I believe if you add up all of  
3 it from the van, Mr. Johnson's person and the townhouse, it  
4 does add up to more than 500 grams or more of powder  
5 cocaine.

6 THE COURT: He is not contesting that portion?

7 MR. RUDE: It is not the amounts, Your Honor. It  
8 is the time period, and the persons with whom he is alleged  
9 to have conspired, aided and abetted.

10 THE COURT: I will accept the plea. If I find  
11 that you were involved in more than this, you realize it is  
12 going to impact on your sentence, the amounts?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: AND NOW this 26th day of September,  
15 2002, the Court finds that the defendant is acting  
16 voluntarily and not as a result of force or threats or  
17 promises apart from the plea agreement, that he understands  
18 his rights, the consequences of his plea and voluntarily  
19 waives his right to trial.

20 The Court is satisfied that the plea has a basis  
21 in fact, contains the elements of the crime charged. The  
22 Court therefore permits the revocation of the not guilty  
23 plea, accepts a plea of guilty to Count 2 of the third  
24 superseding indictment and directs the entry of judgment of  
25 guilty on the plea.

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1 Sentence is deferred pending receipt by the Court  
2 of a presentence report.

3 Court is in recess.

4 THE CLERK: Court is in recess.

5 (Whereupon, the proceedings were concluded.)

6 I hereby certify that the proceedings and  
7 evidence are contained fully and accurately in the notes  
8 taken by me on the trial of the above cause, and that this  
9 copy is a correct transcript of the same.

10  
11 Vicki L. Fox RMR

12 Vicki L. Fox, RMR

13 Official Reporter  
14  
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